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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional): CH19990008US1 (8728-715)

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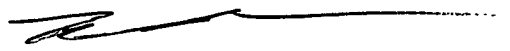
Signature: 
Typed or printed name: Frank V. DeRosa

Application Number	Filed
09/682,253	August 9, 2001

First Named Inventor: Martin Schmatz

Art Unit	Examiner
2613	Agustin Bello

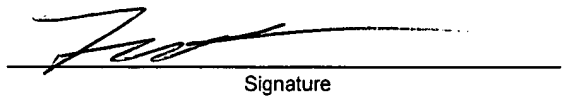
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

- [ ] applicant/inventor.
- [ ] assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)
- [X] attorney or agent of record. Registration number 43,584
- [ ] attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____


Signature

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Typed or printed name

516-692-8888
Telephone number

July 20, 2006
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

- [ ] *Total of _____ forms are submitted.

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

Applicant:	Martin Schmatz	**Examiner:**	Bello, Agustin
Serial No.:	09/682,253	**Group:**	Art Unit 2633
Filed:	August 9, 2001	**Docket No.** :	CH919990008US1 (8728-715)
For:	**Self Aligning Optical Detector**		

Commissioner for Patents
P.O. Box 1450
Alexandria, VA. 22313

Statement in Support of Pre-Appeal Brief Request for Review

This paper is being filed in support of Applicants' Pre-Appeal Brief Request for Review. A Notice of Appeal has been filed herewith in response to the Final Office Action mailed on April 20, 2006. Applicants respectfully contend that the claim rejections set forth in the Final Office Action are clearly erroneous as a matter of law, at least with respect to independent claims 1, 14 and 15.

(i) Claims 1 and 15 stand rejected as being unpatentable over U.S. Patent No. 4,786,891 to Ueda in view of U.S. Patent No. 6,788,895 to Trezza; and

(ii) Claim 14 stands rejected as being unpatentable over U.S. Patent No. 4,762,391 to Margolin in view of Trezza and in further view of U.S. Patent No. 5,262,635 to Curbelo

Applicants maintain that the obviousness rejections are both legally and factually deficient in that there is no showing how the claimed inventions, as a whole, are disclosed or

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Frank V. DeRosa

suggested by the cited references. Here, the Examiner's arguments are seemingly premised on hindsight reasoning by picking and choosing among unrelated, out-of-context, teachings from among various cited references in an effort to meet the elements of the claimed inventions without giving due consideration to the claimed inventions, as a whole.

For instance, Applicants contend that the combination of Trezza and Ueda does not disclose or suggest a *photo detector comprising an array of photo-sensors* that enable electronic alignment a fiber optic strand to the photo detector, as essentially claimed in the inventions of claims 1 and 15, for example. Indeed, both Ueda and Trezza generally disclose an "array of photo sensors", but that the purpose and function of the photo sensor arrays in both Ueda and Trezza are distinct and unrelated to the claimed inventions. The Examiner cannot establish obviousness based merely on a general disclosure by Ueda and Trezza of an "array of photo sensors". At the very least, the Examiner must show, but has not shown, how the combination of Ueda and Trezza teaches *an optical detector comprising an array of photo sensors, wherein the photo sensor array is used to electronically align a fiber optic cable to the photo detector*, as essentially claimed in claims 1 and 15.

In particular, in the Final Action (page 2) the Examiner relies on Ueda's FIG. 12 as disclosing an optical detector that electronically aligns to an optical fiber, wherein the optical detector comprises an array of photo sensors (element 21). Although Ueda generally teaches a sensor array (21) in FIG. 12, the sensor array is clearly not part of a photo detector comprising an array of photo-sensors *wherein the photo sensor array is used to electronically align a fiber optic cable to the photo detector.* Ueda clearly discloses a sensor array (21) that is used to detect grid patterns (11, 12) on a code plate (1) (see, FIG. 9 of Ueda).

Moreover, Examiner's reliance on Trezza to cure the deficiencies of Ueda is equally misplaced. Trezza discloses in FIG. 3B an array of photo detectors (14) and (22) that are connected to corresponding transmitters (emitters) (24) and (12), wherein each unique emitter/detector pair is connected by a signal fiber optic strand (see, Col. 7, lines 26-45). Trezza does not disclose or suggest that a detector (14) or (22) comprises an *array of photo-sensors* which effectively enable alignment of a fiber optic strand to the detector, as essentially contemplated by the claimed inventions. In this regard, Trezza discloses nothing more than a process of mapping point to point connections between transceivers where one or more detectors can be mapped to an emitter when there is misalignment (see, Col. 7, lines 64-67 and Col. 8, lines 53-59).

Based on the above, it is clear that other than impermissible hindsight reconstruction of selected elements, the combination of Ueda and Trezza neither discloses or suggests various features of claims 1 and 15, and is thus legally deficient to establish a *prima facie* case of obviousness against claims 1 and 15.

With regard to claim 14, Applicants maintain that Examiner's reliance on Margolin is misplaced. The Examiner cites various sections of Margolin as teaching electronically aligning an optical fiber to a photo-detector device comprising an array of photo sensors, based on photo sensor signals output from the photo-sensors in the array, as essentially claimed in claim 14. Applicants respectfully disagree with Examiner's characterization of Margolin in this regard.

In particular, Margolin teaches (Col. 5, line 49 – Col. 6, line 8) a process whereby a bundle of optical fibers are disposed to face an array of photo sensors (75) and each fiber is electronically aligned to a single photo sensor in the array. This is different from the claimed inventions whereby an optical fiber is electronically aligned to a detector that comprises an array

of photo sensors. In other words, in the claimed inventions, the optical fiber is not aligned to a single photo sensor, but rather the optical fiber is aligned to the detector based on the output signals generated from the photo sensors.

The Examiner acknowledges that Margolin differs from the claimed inventions in that Margolin does not teach that signals from the photo-sensors that do not receive the optical signals are discounted. This is rather obvious as the function, structure and purpose of Margolin's optical system is entirely different from that of the claimed inventions. However, the Examiner relies on Trezza to cure the deficiencies of Margolin, but such reliance is misplaced for above stated reasons.

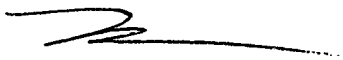
Moreover, as acknowledged by the Examiner, Margolin does not teach the claimed controller having AC and DC extracting circuitry, etc. Indeed, such circuitry is not needed in Margolin as Margolin does not combine the output signals from actuated photo sensors in the photo sensor array forming the photo detector for the purpose of generating a detection signal for the photo-detector, as essentially claimed.

However, the Examiner relies on Curbelo as teaching the claimed AC and DC extraction circuits in FIG. 7. Although Curbelo arguably teaches a signal detector (10) having an AC (110) and DC circuit (115) at the outputs of the detector (10) and a multiplier (120), but such circuitry is not part of a *controller operatively connected to the photo-detector device, to generate a detection signal by processing photo-sensor signals output from one or more photo-sensors in the array that are actuated by said optical signal, while discounting photo-sensors in the array that are not actuated by said optical signal, to thereby electronically align the optical fiber to the photo-detector device*, as recited in claim 14.

Moreover, despite Curbelo's purported general teaching of AC and DC extraction circuits, there is no motivation to modify Margolin with the teachings of Curbelo as Margolin actually teaches away from such combination. Indeed, the Examiner has not shown why it would have been obvious to modify the "controller" of Margolin to include AC and DC extraction circuits for each photosensor in the array of photo sensors, especially given that Margolin teaches alignment of an each optical fiber in a bundle of fibers to a single photo sensor in an array of photo sensors and does not combine the outputs of a plurality of photo sensors to generate a detection signal. In short, the combination of Margolin , Trezza and Curbelo is legally deficient to establish a *prima facie* case of obviousness against claim 14.

Accordingly, for at least the above reasons, withdrawal of the obviousness rejections is respectfully requested.

Respectfully submitted,



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